

**Expedited Procedure Under 37 CFR §1.116**

Application No. 10/516,796

Paper Dated January 5, 2009

In Reply to Final Office Action Dated October 3, 2008

Attorney Docket No. 3985-045798

**REMARKS**

Claims 9-13, 15, and 16 remain in this application. Claims 9 and 16 have been amended, while the remaining claims are unchanged. Claims 1-8 and 14 have been cancelled via an earlier Amendment. No new subject matter is believed to have been added by this Amendment.

On page 2 of the Office Action, the Examiner rejects claims 9-12, 15 and 16 under 35 U.S.C. §103(a), as being obvious from the teaching of United States Patent No. 6,027,466 to Diefenbacher, et al. (hereinafter the "Diefenbacher patent"), in view of the teaching of United States Patent Application Publication No. 2002/0133108 to Jagodzinski (hereinafter the "Jagodzinski application").

The Diefenbacher patent is directed to an adjustable orthopedic device which, as illustrated in Fig. 1, has a joint 1 that provides rotary motion along a flexion/extension plane through connectors 4, 5, respectively. Additionally, as illustrated in Figs. 2-4, and as discussed in column 2, line 61- column 3, line 15, a rocker arm 16 about pin 33 provides for angular adjustment in the plane of abduction/adduction 10 that is substantially orthogonal to the flexion plane. This is achieved through a threaded cylinder 20 (Fig. 5) with a socket head 34 that is threaded into passage 11. The cylinder 20 is held captive between the body and the backing plate and is accessible for rotation through slot 35 for an adjustment as shown in Fig. 3. However, as stated in column 3. lines 11-14, the abduction angle is continuously adjustable and whatever angle is set by cylinder 20 remains fixed until cylinder 20 is readjusted.

On the other hand, the orthopedic device in accordance with the invention as found in amended claim 1 comprises two hinges and each hinge has a pivot axis and pivots freely about that axis. The description of the bounding means found in claim 1 has been amended such that the bounding means limits at least one of the pivoting movements of at least one of the hinges to unrestrained movement within a chosen range of motion. In contrast, the Diefenbacher patent provides a range of fixed adjustments for angular positioning but not for unrestrained movement. Such unrestrained movement is neither taught nor suggested by the Diefenbacher patent alone or in combination with the other references cited by the Examiner.

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The Applicants would like to thank the Examiner for the telephone interview conducted Monday, December 15, 2008, in which this distinction was discussed and the Examiner concurred would define over the teaching of the Diefenbacher patent.

As a result, claim 9 is believed to be patentably distinct over the prior art of record. By way of their dependence upon what is believed to be patentably independent claim 9, dependent claims 11, 12 and 15 are themselves believed to be patentably distinct over the prior art of record.


Independent claim 16 has been amended in a fashion similar to that of independent claim 9 and the same reasons apply to claim 16 that were argued in favor of patentability of independent claim 9.

On page 3 of the Office Action the Examiner rejects claim 13 under 35 U.S.C. §103(a) as being obvious from the teaching of the Diefenbacher patent, in view of the teaching of Jagodzinski application, and, furthermore, in view of the teaching of United States Patent No. 6,201,511 to Johnson, et al. By way of its dependence upon what is believed to be patentably distinct independent claim 9, dependent claim 13 is itself believed to be patentably distinct over the prior art of record.

Reconsideration and allowance of claims 9-13, 15, and 16 are respectfully requested.

Respectfully submitted

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